

ORIGINAL

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FILED

March 3 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. _____

CHARLES LOKEY,
and VANESSA LOKEY,

Appellants,

vs.

ANDREW J. BREUNER,
and A.M. WELLES, INC.,

Appellees.

NOTICE OF APPEAL

NOTICE is given that Charles and Vanessa Lokey, husband and wife, plaintiffs in *Charles Lokey and Vanessa Lokey v. Andrew J. Breuner and A.M. Welles, Inc.*, Eighteenth Judicial District Court Cause No. DV-08-57B, hereby appeal: (1) the District Court's dismissal of defendant A.M. Welles, Inc., by Decision and Order dated February 6, 2009, copy attached as Exhibit 1; and (2) the District Court's finding of fact and conclusion of law that Charles Lokey

violated § 61-8-324, MCA, by Order Denying Defendant's Motion for Summary Judgment and Denying Plaintiffs' Motion for Partial Summary Judgment dated June 9, 2009, copy attached at Exhibit 2.

The District Court has certified its Decision and Order dated February 6, 2009, as final for purposes of appeal pursuant to Rule 54(b), M.R.Civ.P. A copy of its Order Granting Plaintiffs' Motion for Rule 54(b) Certification dated February 17, 2010, is attached as Exhibit 3, and since the District Court could have done a better job of articulating the reasons for certification, the Lokeys are also attaching their motion for certification and related briefing as Exhibits 4 through 7.

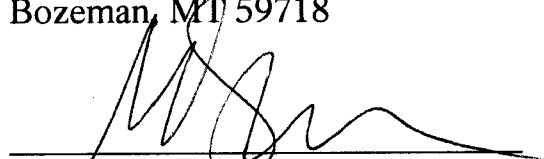
The Lokeys are appealing the District Court's finding of fact and conclusion of law that Charles Lokey violated § 61-8-324, MCA, pursuant to Rule 4(4)(a), M.R.App.P., which states that an appeal from a judgment draws into question all previous orders and rulings which led up to and resulted in that judgment, and *Clouse v. Lewis & Clark County*, 2008 MT 271, ¶ 27, 345 Mont. 208, 190 P.3d 1052 (holding that an intermediate order involving the merits or necessarily effecting the final judgment may be reviewed on appeal).

The Lokeys certify that: (1) this appeal is subject to mediation, and the amount at issue is more than \$5,000.00; (2) this is an appeal from an order certified as final under Rule 54(b), M.R.Civ.P; (3) this appeal does not challenge

the constitutionality of any act of the Montana legislature; (4) all available transcripts have been ordered; and (5) this Notice of Appeal is accompanied by the required filing fee.

DATED this 1 day of March, 2010.

Martin R. Studer
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Bozeman, MT 59718



Martin R. Studer
Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of this Notice of Appeal will be served upon the following by depositing the same, postage paid and addressed as indicated, in the mail this 1 day of March, 2010.

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